Remarks:

Regarding the rejection of claims 16 and 17 under 35 USC 112:
The applicant herein amends these claims to correct a spelling error in of the term "adamantine", which correction is believed to fully address and overcome the grounds of rejection.

Regarding the rejection of claims 1, 2, 11 – 27 under 35 USC 103(a) over US 4382111 to Kuwayama in view of US 4233161 to Sato.
The applicant respectfully traverses the grounds of rejection in view of the combined Kuwayama and Sato references.

Prior to discussing the respective merits of the prior art documents, the Examiner is respectfully reminded that with regard to any rejection based on obviousness under 35 USC §103(b), MPEP section 2143 states that three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in applicant's disclosure. See, *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991); *In re Rouffet*, 149 F.3d 1350, 1355-56 [47 USPQ2d 1453] (Fed. Cir. 1998). But see also *KSR International Co. v. Teleflex Inc.*, 82 USPQ2D 1385 (U.S. 2007)

With respect first to the Kuwayama reference, the applicant traverses that Examiner's position that a skilled artisan reading the reference would be led to produce the "textile treatment delivery system" which is presently claimed. Kuwayama is essentially directed towards a process for imparting lubricity to fibers by the application of a sublimable

any treatment benefits which are relevant to a clothes dryer or to the treatment of finished goods. Importantly, Kuwayama fails to teach or suggest in any reasonable manner the use of a sublimable material as a carrier for further constituents. Indeed, it is reasonable to presume that at the end of his process, the sublimable material applied according to the Kuwayama would likely have completely dissipated and thus provide no useful treatment benefits to finished goods, or textiles.

The applicant also traverses the reliance upon the Sato reference in seeking to address and over, the fatal shortcomings out of the Kuwayama reference outlined above. The Examiner points to a passing statement at col. 2, lines 15 - 21 which makes reference that sublimable hydrocarbons can be used in the Sato compositions, which sublimable hydrocarbons may include adamantine. Sato however does not teach or even suggest the utility of his compositions on textiles. It is only the Examiner's statement that "it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to modify the teachings composition of Kuwayama et al., with a fragrance in a sublimable carrier, as recited by the instant claims, because Sato et al. teach that adamantine and cyclododecane the sublimable compositions are useful as a carrier for perfume and Kuwayama et al. teach the analogous adamantine and cyclododecane sublimable substances for application to textile. One of ordinary skill in the art would be motivated to combine the teachings of Kuwayama et al. with that of Sato et al. since both references teach the analogous sublimable substances." The applicant strongly traverse the Examiner's presupposition of this point.

With regard to the normal level of inquiry and skill in the art, it is the applicant's viewpoint that the relevant skilled artisan would be one face with the technical problem of seeking to provide an improved textile treatment benefit to finished goods and textiles which treatment process can be practiced in a clothes dryer. Neither the Kuwayama document nor the Sato document appear to be relevant, as neither of these teachers suggest the utility of their processes or their compositions in such a manner or in such an environment of use. Sato is wholly silent on this point. The Examiner at best points to

Kuwayama would suggest various generic modes of applying his sublimable material directly to fibers or yarns which however are not however practiced in a clothes dryer. It is the applicant's viewpoint that only by "hindsight reconstruction" has the Examiner selected among the various statements within the separate Kuwayama and Sato documents in order to reconstruct the applicant's invention. However, as is well-recognized in the jurisprudence such a hindsight reconstruction is impermissible.

Interestingly, Kuwayama points out the known deficiencies in prior art lubricating compositions including those based on waxes or silicones and particularly points out that it is particularly problematic to remove such prior art lubricants. (Kuwayama, col. 1, lines 14 – 57) This is ostensibly overcome by the use practice of the Kuwayama process, as it appears that any residues on yarns or fibers would have dissipated prior to any knitting or weaving operation as the sublimable materials used as a lubricant in the Kuwayama process would have long since dissipated into the ambient environment. Else, should such sublimable materials not have dissipated, they are likely to have no particular benefit over at the prior art lubricants of which Kuwayama complains. Furthermore, as the Kuwayama process is directed to a fiber or you aren't treatment process, which is used to import lubricity to such fibers or yarns prior to their later production into textiles or fabrics, and still later to their ultimate formation in finished goods, it is clear that the Kuwayama process would be practiced in an industrial setting and best it would be no interest in providing a perfuming composition. Such perfumes are known to be volatile; and it is unlikely there would be any need or concern to provide such a perfuming composition prior to the subsequent processing steps wherein any such perfumes benefit would be expected to vanish while prior to pass into the hands of a consumer. Thus, there is no motivation to even combine Sato's composition with the Kuwayama process as there is no technical need to do so. This would be immediately recognized by a skilled artisan in the appropriate field. Additionally, Sato provides no suggestion that a fragranced composition useful in a clothes dryer could be made using sublimable materials. Indeed, the mere age of both of the Kuwayama references and the Sato references both of which two individually or jointly fail to teach or suggest the

current invention provides strong indication of both the novelty and the patentability of the currently presented claims.

In view of the foregoing remarks the present applicants disagree with the Examiner's position, and point out that the Examiner has not met the proper burden of proof to present and maintain the rejection; such are simply unsupported by the facts for the reasons noted above. Rather the applicant contends that the Examiner's grounds of rejection is at, at best, a hindsight reconstruction, using applicant's claim as a template to reconstruct the invention by picking and choosing amongst isolated disclosures from the prior art. This is impermissible under the law. For example, in *In re Fritch*, 972 F.2d 1260, 1266, 23 USPQ2d 1780, 1784 (Fed. Cir. 1992), the Federal Circuit stated:

> "It is impermissible to use the claimed invention as an instruction manual or "template" to piece together the teachings of the prior art so that the claimed invention is rendered obvious. *In re Gorman*, 933 F.2d 982, 987, 18 USPQ2d 1885, 1888 (Fed. Cir. 1991). This court has previously stated that "[o]ne cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention." (quoting *In re Fine*, 837 F.2d at 1075, 5 USPQ2d at 1600)

Accordingly, reconsideration of the propriety of the rejection of claim 18 and its withdrawal is respectfully requested.

In view of the foregoing remarks, reconsideration of the rejections raised by the Examiner is respectfully requested, and early issuance of a *Notice of Allowance* is solicited. Should the Examiner in charge of this application believe that telephonic communication with the undersigned representative would meaningfully advance the prosecution of this application towards allowance, the Examiner is invited to contact the undersigned at their earliest convenience.

CONDITIONAL AUTHORIZATION FOR FEES

Should any further fee be required by the Commissioner in order to permit the timely

entry of this paper, the Commissioner is authorized to charge any such fee to Deposit Account No. 14-1263.

Respectfully Submitted;

Andrew N. Parfomak 01 October 2007

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CERTIFICATE OF TELEFAX TRANSMISSION UNDER 37 CFR 1.8

I certify that this document, and any attachments thereto, addressed to the: "Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" is being telefax transmitted to (571) 273-8300 at the United States Patent and Trademark Office.

Andrew N. Parfomak 01 October 2007

Andrew N. Parfomak Date

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